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HEARING CLERK
EPA--REGION 10

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of:

JOSEPH OH

and

HOLLY INVESTMENT, LLC,

Respondents.

Docket No. RCRA-10-2011-0164

COMPLAINANT'S REBUTTAL PREHEARING EXCHANGE

Respondent's Prehearing Exchange was due on February 17, 2012, but not sent by email to counsel for the U.S. Environmental Protection Agency, Region 10 ("Complainant" or "EPA") until February 28, 2012, and was not filed with the Regional Hearing Clerk until March 1, 2012.¹

¹ Complainant does not oppose the late filing of Respondent's Prehearing Exchange, but reserves the right to oppose any additional late filings in the future.

In response to Respondent's Prehearing Exchange, Complainant hereby submits the following Rebuttal Prehearing Exchange.

I. REBUTTAL WITNESSES

Respondent's list of witnesses is incomplete. He also failed to provide a sufficiently specific summary of the testimony of each witness listed to inform Complainant of the testimony Complainant may need to rebut at hearing. If needed, Complainant may present the testimony of its previously listed witnesses, Charlotte Boulind-Yeung, Philip Nenninger, and Katherine Griffith, to rebut testimony presented by Respondent's witnesses. Complainant may also move to compel discovery and/or to supplement its prehearing exchange to add the names of additional rebuttal witnesses and exhibits in accordance with 40 C.F.R. §§ 22.19 and 22.22(a).

II. DOCUMENTS AND EXHIBITS

Copies of additional documents Complainant intends to introduce into evidence are numbered and attached hereto as follows:

- CX 32: Cover Memo and Photos taken by EPA Inspector when driving by Totem Grocery and Gas on January 11, 2012
- CX 33: Automatic tank gauge (ATG) printout slips provided to EPA on February 28, 2012

III. ADDITIONAL INFORMATION REQUESTED BY PRESIDING OFFICER

Complainant responds to the request for additional information by the Presiding Officer as follows:

A. Respondent has failed to submit a narrative statement, and a copy of any supporting documents, explaining in detail the legal or factual bases for the denials in Paragraphs 2.1 through 2.12, and 3.2 through 3.11 of his Answer, as required in the Prehearing Order. Therefore, at this time, Complainant is unable to submit a response to such statement and supporting documents as required by the Prehearing Order. Complainant reserves the right to submit a response, including a supplement to its Prehearing Exchange, if and when Respondent submits the requested information.² Meanwhile, Complainant submits the photographs in CX 32 to document the “Totem Grocery & Gas” signs at the facility, and to document that at least one of the underground storage tanks (USTs) at the facility was still being used as of January 11, 2012. In addition, Complainant submits the ATG slips in CX 33, to document that at least one of the USTs at the facility was still, as of February 9, 2012, out of compliance with the release detection requirements in 40 C.F.R. § 280.41(a).

B. In his Prehearing Exchange, Respondent has failed to indicate whether he takes the position that the proposed penalty should be reduced or eliminated, and to provide a detailed narrative statement explaining the precise factual and legal bases for such position or any documents to support such position. Complainant reserves the right to submit a response, if and when Respondent submits the requested information.

² Complainant may also move the Presiding Officer to draw negative inferences from Respondent’s failure to provide information requested in the Prehearing Order. See 40 C.F.R. § 280.19(g).

Respectfully submitted this 2nd day of March, 2012.

A handwritten signature in cursive script, reading "Deborah E. Hilsman". The signature is written in dark ink and is positioned above a horizontal line.

Deborah E. Hilsman
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 10

CERTIFICATE OF SERVICE

In the Matter of Joseph Oh and Holly Investment, LLC, No. RCRA-10-2011-0164, I hereby certify that a copy of COMPLAINANT'S REBUTTAL PREHEARING EXCHANGE, with copies of exhibits, was sent to the following persons in the manner specified on the date below:

Original and one true and correct copy of each document, by hand delivery:

Candace H. Smith, Acting Regional Hearing Clerk³
U.S. Environmental Protection Agency
Region 10, Suite 900
Office of Regional Counsel
1200 Sixth Avenue, Mail Stop ORC-158
Seattle, Washington 98101

A true and correct copy of each document, by Pouch Mail to:

The Honorable M. Lisa Buschmann, Administrative Law Judge
Office of Administrative Law Judges
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W., Mail Code 1900L
Washington, DC 20460

A true and correct copy of each document, by First Class Mail:

Joseph Oh, FBO
4905 70th Avenue West
University Place, Washington 98467

DATED: March 2, 2012

Sharon Eng
Signature
Print Name: Sharon Eng
Title: paralegal

³ Respondent should note the change in the Regional Hearing Clerk information. Respondent should also note that the case has been reassigned to Judge Buschmann.